No. 9(1)82-PV-6Lab. 9893.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947(Act No. XIV of 1947), the Governor of Haryana is pleased to published the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the Dispute between the workmen and the management of M/s. Ferrous Alloy Forgings III DLF Industrial Estate, Mathura Road, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 41/1979

Between

THE WORKMEN AND THE MANAGEMENT OF M/S FERROUS ALLOWY FORGINGS, III D.L.F. INDUSTRIAL ESTATE, MATHURA ROAD, FARIDABAD.

Present :—Shri R.N. Roy, for the workman.
Shri R.N. Rai, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workmen and the management of M/s Ferrous Alloy Forgings, III- D.L.F. Industrial Estate, Mathura Road, Faridabad, by order No. FD/2436 dated 12th January, 1979, to this Tribunal, for adjudication in exercise of powers conferred by clause(d) of sub-section (1) of Section 10 of the Industrial Disputse Act, 1947 :—

Whether the termination of services of the workmen showing in Annexure 'A' was justified and in order ? If not, to what relief are they entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my learned Predecessor on 12th July, 1979 :—

(1) Wiether the demands need espousal ?

(2) If issue No. 1 is proved, whether there has been proper espousal by substantial unmber of wormen.

(3) Whether the dispute is not an Industrial Disputes ?

(4) Whether the termination of services of the workmen showimg in annexure 'A' was justified and in order ? If not to what relief are they entitled ?

And the case was fixed for the evidence of the workmen. The workmen examined Shri D.S. Chauhan Workman as WW-1, Shri Brij Narain Sharma workman, Shri Mohd. Safi as WW-3, Shri Gajinder Paul workman as WW-4, Shri Mukand Singh workman as WW-5, Shri Shokart Ali WW-6, Shri Ashrafi Lal workman as WW-7, Shri Nanku Singh WW-8, Shri Dev Nath Pandit workman as WW-9, Shri Ram Dayal as WW-10, Shri Ram Kishore workman as WW-11, Shri Gulam Deen workman as WW-12, Shri Gurcharan Singh, Boiler Incharge, as WW-13 Shri Ram Achal Workman as WW-14, Shri Suraj Bhan workman as WW-16 Shri Kadir Khan workman as WW-17. The management examined Shri Randhir Singh Clerk office of the Labour Officer, Sector-21, Faridabad as MW-1 and Shri J.N. Maheswari Chief Matrologist-cum-Technical Manager of the respondent management is WW-2. Arguments were heard. My findings issue wise is as under :—

Issue No. 1 :—The present reference is regarding termination of service of the workmen shown in annexure 'A' who numbered 22. The claim statement was also filed on behalf of the concerned workmen through Shri R.N. Roy, President, Mercantile Employees Association. The management took objection in the written statement that the present dispute was not referred under Section 2-A of the Industrial Disputes Act, 1947 and as such had not been espoused by the workers of the establishment. On behalf ofthe workmen, it was replied in the rejoinder that the present dispute was an industrial dispute under section 2(k) read with section 2-A of the Industrial Disputes Act. It was also contended in the given reply that even prior to introduction of section 2A in the Industrial disputes A ct, 1947, such dispute is an Industrial Dispute as defined under Section 2(k) of of the Act. This issue is legal issue therefore, no evidence was led on this issue. In argument, the learned representative for the management argued that Section-2A envisages individual dispute whereas Section 2(k) collective dispute. On the other hand, learned representative for the workman argued that the espousal was not necessary as stated in para-2 of the claim statement. He also argued that the present reference was under Section 2A read with Section 2(k).

For letter appreciation of the two clauses, these are given as under :—

Section-2(K) "industrial dispute" means any dispute or difference between employees and employer or between employers and workmen, or between workmen and workmen, which is connected

with the employment or non-employment or the terms of employment or with the conditions of labour of any person ;

Section 3-A.—Dismissal, etc., of an individual workman to be deemed to be industrial dispute. Where any employer discharges, dismiss, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between the workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

It is clear in the definition of industrial dispute that the dispute or reference should be between employees and employers or between employers and workmen or between workmen and workmen. It may however, could be connected with terms of employment etc of any person. As regard Section 2-A it was clear from the heading, dismissal etc. of an individual workman was to be deemed to be industrial dispute. The concluding words "shall be deemed to be industrial dispute not withstanding that no other workman nor any union of workmen is party of the dispute" given in the section which means that such dispute of an individual workman will fall within the ambit of dispute as defined in Section 2 (K) above. The learned representative for the workman cited 1977- II-LLJ page 207. The Hon'ble judges of Punjab and Haryana High Court in para 6 of the judgement traded necessity of Section 2-A which was inserted by the Legislation in 1965 in the following words :—

"The employer had terminated the services of an individual workman. There was a dispute between the workman and the employer in connection withthe termination of services though a notice of demand was issued not by the workman, himself, but by the union, apparently on his behalf. The espousal by the union of the dispute between the workman and the employer would not take it out of S. 2A merely on that account. The espousal by the other workmen may also make it a collective dispute, but it does not on that account cease to be a dispute between the individual workman and the management. What S. 2A really means is that a dispute between an individual workman and the management in regard to the termination of the services of the workman shall be deemed to be an industrial dispute, whether or not other workmen join the dispute. It does not mean that so soon as other workmen join the dispute it goes out of the purviews of S.2A".

This case was under section 2A and Section 10 of the Industrial Disputes Act and it was held that "reference of an individual dispute under section 2-A would be valid even if it is espoused by the union of workmen further held such reference would not take the dispute out of the purview of Section 2A. Thus it was clear that emphasis was on an individual dispute which always remain between the workman and employer even espousal of the dispute by the union kept the same between the concerned workman and his management. As regards the case in hand, the reference is regarding termination of services of 22 workers which cannot be any strech and imagination called an individual dispute as envisaged by section 2A, therefore, it was a collective dispute as defined under Section 2 (K). On the ratio of the above said ruling, the law as stood before the insertion of Section 2-A, in regard to collective dispute remained unchanged in so far as aspousal of dispute by the union or substantial number of workmen was concerned. Therefore, this issue is decided in favour of the management.

Issue No. 2. In this case, 17 of the concerned workmen named in the reference appeared. WW-1 stated in his examination chief that he was general secretary of the union and had raised some demands on 24-10-1978. Copy of the demand notice was Ex. W-1. In cross-examination, he replied that name of the union was Bhartia Mazdoor Sangh. The union was a registered union. There were 32-33 workers members of the union. A meeting of the union regarding demand notice was held in the month of October, 1978. He had no record with him. WW-2 stated in his cross examination that he gave demand notice alongwith other workers which was signed by total 22 persons. The union was named B.M.S. It had constitution, record of membership and minutes book etc. He was member of the union. A meeting of the workers was held before giving demand notice. He could not tell the date of the meeting. WW-4 in cross examination, replied that he had given a joint demand notice EX-W2. A general meeting of the workers was held for raising dispute. He could not give the date. About 30 workers attended the meeting. A resolution was passed. That resolution was not recorded in the register. He was Assistant Secretary of the union. There was no other record of the union except subscription receipts. WW-5 stated that he had raised a demand and concilliation proceeding were held. In cross-examination, he stated that no meeting for raising demand was held by the union. WM-7 stated that he had given demand notice. No other witnesses deposed on this issue.

The learned representative for the management argued that there was no espousal of the dispute by the workmen of the factory. He contended that no copy of resolution was produced nor any record of the union or resolution was proved. He also contended that out of existing employees none came to support the present dispute. He cited 1960-I-LLJ-page 394 and argued that there was no proof of authorisation. He cited 1975-Lab. I.C page 358 (S.C.) in which held that "where out of sixty workmen employed in the Company only 18 workmen sponsored the cause of the dismissed and retrenched workmen and the 18 included thirteen dismissed workers of the Company".

Held "that the espousing of the cause of the workman was only by five workmen who were, at the relevant time actually in the employment of the Company i.e. the proportion was five to sixty Such an espousal could not be considered to be by an appreciable or substantial body of workmen so as to constitute the dispute an industrial dispute. Hence there being no industrial dispute, the reference made by the State Government was incompetent."

As regards the evidence WW-1 General Secretary of the union had given the name of the union Bhartia Mazdoor Sangh and stated that meeting was held by the union for demand notice in the month of October, 1978. WW-2 stated that there was a union named B.M.S. It had record of membership and minutes books etc. In the meeting 22 persons were present. Whereas WW-4 deposed that 33 persons attended the meeting. The resolution was not recorded in the registered and there was no record of the union except the subscription receipts. Coming to the demand notice Ex. W-1 referred by WW-1, I find that it was about bonus and some other general demands. It was signed by 5 persons. No designation or office held by them is given. It is dated 24-10-1978 I find from the statement of WW-1 and others witnesses that they were not allowed to join duty on 15-11-1978 by the management. According to WW-1 they had worked upto 8-11-1978 in the factory and further when they reached for duty on 15-12-1978 they were not allowed to work. It means that the meeting referred by WW-1 in his statement was about the general demand notice. There was no question of holding the meeting regarding termination in the month of October because the workmen were on duty in the month of November itself. The workmen had failed to prove that the dispute was espoused by the members of the union or a substantial member of workmen in the industry. It was the duty of the workmen to prove that they acted together and arrived at an understanding by a resolution or by other means and collectively supported on the date of reference. Considering the contradictory statements of WWs and the facts that none of their fellow workers appeared nor any record of the union was produced, I find that there was no meeting of a substantial number of workmen held to raise the present demand. I also find that no copy of the demand notice regarding present dispute was placed on the file and claim statement was signed for the workmen by the President of Mercantile Employees Association, New Delhi and not the Bhartia Mazdoor Sangh, Bata Chowk, Faridabad. This issue is therefore, decided against the workmen. The dispute fails on this ground because it could not be termed as industrial dispute in view of my above discussion.

I give my award that the workmen were not entitled to any relief.

Dated, 4-9-1982

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 987, dated 14th September, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1) 82-PV-6Lab/9894.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. IV of 1947), the Governor of Haryana is pleased to published the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s K.K. Spun Pipe Tigaon Road, Bullabgarh.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 11 /1981

between

SHRI GANU RAM WORKMAN AND THE MANAGEMENT OF M/S K. K. SPUN PIPE TIGAON ROAD, BALLABGARH

Present—

Shri Darshan Singh for the workman.

Shri R. L. Aneja for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Ganu Ram and the management of M/s K.K. Spun Pipe, Tigaon Road, Faridabad, by order No. ID/FD/84-80/4002, dated 22nd January, 1982 to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Ganu Ram was justified and in order ? If not, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my order dated 6-4-1981 :

(1) Whether the workman abondoned his job of his own ?

(2) Whether the termination of services of Shri Ganu Ram was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management. The management examined Shri Ishwar Chand Partner as MW-1. The workman examined himself as his own witness. Arguments were heard. My findings issue-wise is as under :—

Issue No. 1.—Shri Ishwar Chand Partner of the firm who appeared as MW 1 deposed that the workman remained absent from 14-5-1980 to 31-5-1980. He had brought attendance register copy of which was Exhibit M-1. Reply letter Ex. M-2 was sent to the workman by registered post. Postal receipt was Exhibit M-3. The workman refused to receive the letters which were Exhibit M-4 and M-5. The management never refused duty to the workman. He stopped to come to the factory of his own will. He did not come to join duty nor replied the management's letters after which the name of the workman was struck off. The manufacturing process was stopped in the factory and it was leased out because there was no workman. Copy of the lease deed was Ex. M-6. The workman left the job because he was earning Rs 20-30 per day, by working as a loader. In cross-examination, he replied that the letter to the workman was written on 28-5-1980. The factory was not closed but production was stopped. He attended the conciliation proceeding.

The concerned workman deposed that he was working in the factory for the last 9 years. His service was terminated on 6-5-1980. Copy of E.S.I. Card was Exhibit W. 1. He had formed a union for revising of wages He was not paid notice pay of compensation at the time of termination. He did not received any letter from the management. In cross examination, he replied that he had made a complaint to the union about termination. He did not know when the union raised the demand. He never lived in company quarter after his termination because the management asked him to vacate quarter. He denied suggestion that he abandoned the job. He admitted that he had not worked from 11-5-1980.

I have gone through the documents and find that according to Exhibit M-1, the workman remained continuously absent from 14th May, 1980 and his name was struck off w.e.f. 6-6-1980. The management had written him call letter Exhibit M-5 which was refused by the workman,—*vide* post scription dated 30-5-1980 on the letter. The management informed,—*vide* letter Ex. M-2 that his name had been struck off. This letter was received by the workman,—*vide* A.D. Card Exhibit M-4. I find letter Ex. M-5 was sent to the workman C/o M/s K. K. Spun Pipe Industrial Complex and letter Ex. M-2 at his home address in Bihar. The management did not issue him call letter at his home address. It is settled law that when the addressee refused to receive the letter it means that he knows the content of the letter. The workman also kept mum even after receipt of termination. Later on he raised his demand after lapse of one year. In this circumstance, I presume the he abandoned the job. This issue is, therefore, decided accordingly.

Issue No. 2.—The law in the subject was laid down by the Hon'ble Supreme Court in D.C.M. and General Mills *v/s* Shambu Nath Mukerjee 1978-I-LLJ-Page 1 where it was held that striking of name of a workman from the muster roll of the management was termination of the service. It was retrenchment within the meaning of section 2 (00) of the Industrial Disputes Act. It was further retriated in Santosh Gupta V/s State Bank of Patiala 1980-II-LLJ Page 72. In this case their lordship of the Supreme Court set out law and scope of Section 2 (00) in the following words :—

> If the definition of "retrenchment" is looked at unaided and hampered by precedent, one is at once struck by the remarkably wide language employed and particularly by the use of the words "termination ..... for any reason whatsoever." the definition expressly excludes termination of service as a punishment inflicted by way of disciplinary action. The definition does not include, so it expressly says, voluntary retirement of a workman or retrenchment of the workman on reaching the age of superannuation or termination of the service of the workmen on the ground of continuous ill health. Voluntarily retirement of a workman or retrenchment of

the workman on reaching the age of superannuation can hardly be described as termination by the employer, of the service of a workman. Yet the legislature took special care to emotion that they were not included within the meaning of "termination by the employer of the service of a workman for any reason whatsoever".

It is case of the both parties that compliance of section 25 (F) of the Industrial Disputes Act, 1947 was not complied. The service of the workman being of more than one year. According to the section, it was incumbent upon the management to pay one month notice pay and retrenchment compensation admissible to him under section (d) of section 25-F at the time of termination of service. In this circumstence, I find that the order of the management was not in order. As regard the contention of the management that factory had been leased out on monthly rent of Rs one thousand. It had no effect upon the merits of the present case. There was provision in the Industrial disputes Act and Rules under Industrial Disputes Act, compliance of which was necessary, in such case. In this circumstance I find that the workman is entitled to his reinstatement with full back wages.

While answering the reference I pass my award that the workman is entitled to his reinstatement with full back wages.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated: 13-9-1982

Endorsement No. 988, dated 14th September, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-P-6Lab/9896.—In pursuance of the provision of section 17 of the Industrial Disputes Act 1947(Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the Dispute between the workman and the management of M/s K.K. Spun Pipe, Tigaon Road, Ballabgarh.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 6/1980

between

SHRI BANKEY SHAH WORKMAN AND THE MANAGEMENT OF M/S. K. K. SPUN PIPE, TIGAON ROAD, BALLABGARH

Present :—

Shri Darshan Singh, for the workman.

Shri R. L. Aneja, for the management.

AWARD

The Government of Haryana referred the following dispute between the workman Shri Bankey Shah and the management of M/s K.K. Spun Pipe, Tigaon Road, Ballabgarh by order No. ID/FD/94-80/3978, dated 22nd January, 1981, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of service of Shri Bankey Shah was justified and in order ? If not, to what relief is he entitled ?

Notices of the references were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties the following issues were framed by my order of 6th April, 1981 :—

(1) whether the workman abandoned his job of his own ?

(2) whether the termination of services of Shri Bankey Shah was justified and in order ? If not, to what relief is he entitled ?

And the case was filed for the evidence of the management who examined Shri Ishwar Chand partner as MW-1. The workman examined himself as his own witness. Arguments were heard. My findings issuewise is as under :—

Issue No. 1.—Shri Ishar Chand Partner of the firm who appeared as MW1 deposed that the wokman remained absent from 4th May, 1980 to 31st May, 1980. He had brought the attendance register copy of which

was Exhibit M-1. Reply letter Exhibit M-2 was sent to the workman by registered post. Postal receipt was Exhibit M-3. The workman refused to receive the letters which were Exhibit M-4 and M-5. The management never refused duty to the workman. He stopped to come to the facto y of his own will. He did not come to join duty nof replied the management's letters after which the name of the workman was struck off. The manufacturing process was stopped in the factory and it was leased out because there was no workman. Copy of leaseded was Exhibit M-6. The workman left the job because he was earning Rs. 20—30 per day by working as a loader. In cross-examination, he replied that the letter to the workman was written on 28th May, 1980. The factory was not closed but production was stopped. He attended the conciliation proceedings.

The concerned workman stated that he was in the employment for the last 4-5 years. The workman had formed a union for revising of their wages. Therefore, his servic s was terminated. Copy of E.S.I. Card was Exhibit W-1. He was not paid any notice pay or retrenchment compensation. In cross-examination, he admitted that he had not mentioned the fact of farming union and claim of revision of wages in his demand notice. He denied that he worked in Paradise Company. He did not work as labourer here and there. He admitted that the management had provided accommodation in the factory. He used to receive the letter from his Home at factory address. He denied that he remained absent from 11th May, 1980. He denied that he refused to receive the letter of the management. He denied that factory was closed for his non-attendances.

I have gone through the documents and find that according to Exhibit M-1, the workman remained continuously absent from 14th May, 1980 and his name was struck off with effect from 6th June, 1980. The management had written him call letter Exhibit M-5 which was refused by the workman,—*vide* post scription, dated 30th May, 1980 on the letter. The management informed,—*vide* letter Exhibit M-2 that his name had been struck off. This letter was received by the workman,—*vide* A.D. card Exhibit M-4. I find letter Exibit M-5 was sent to the workman C/o M/s K. K. Spun Pipe Industrial Complex and letter Exhibit M-2 at his home address in Bihar. The management did not issue him call letter at his home address. It is settled law that when the addressee refused to receive the letter it means that he knows the content of the letter. The workman also kept mum even after receipt of termination later on he raised his demand after lapse of two months. In this circumstance, I presume that he abandoned the job. This issue is, therefore, decided accordingly.

Issue No. 2.—The law on the subject was laid down by the Hon'ble Supreme Court in D.C.M. & General Mill *Versus* Shambu Nath Mukerjee 1978-I-LLJ page I where it was held that striking off name of a workman from the muster roll of the management was termination of the service. It was retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act. It was further retriated in Santosh Gupta *Versus* State Bank of Patiala 1980—II—LLJ—page 72. In this case their lordship of the Supreme Court set out law and scope of Section 2(oo) in the following words :—

> "If the definition of "retrenchment" is looked at unaided and hampered by precedent, one is at once struck by the remarkably wide language employed and particularly by the use of the words "termination.....for any reason whatsoever". The definition expressely excludes termination of service as a punishment inflicted by way of disciplinary action. The definitions does not include, so it expressly says, voluntary retirement of a workman or retrenchment of the workman on reaching the age of superannuation or termination of the service of the workman on the ground of continuous ill health. Voluntarily retirement of a workman or retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman. Yet the legislature took special care to mention that they were not included within the meaning of "termination by the employer of the service of a workman for any reason whatsoever".

It is case of the both parties that compliance of Section 25(F) of the Industrial Disputes Act, 1947 was not done the service of the workman being of more than one year. According to the Section it was incumbent upon the management to pay one month notice pay and retrenchment compensation admissible to him under Section (d) of section 25-F at the time of termination of service. In this circumstance, I find that the order of the management was not in order. As regard the contention of the management that factory had been leased out on monthly rent of Rs. one thousand. It had no effect upon the merits of the present case. There was provision in the Industrial Disputes Act and Rules under Industrial Disputes Act compliance of which necessary, in such case. In this circumstance I find that the workman is entitled to his reinstatement with full back wages.

While answering the reference, I pass my award that the workman is entitled to his reinstatement with full back wages.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Dated the 14th September, 1982.

Endorsement No. 990, dated 14th September, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.